

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7270

Joint Petition of Verizon New England, Inc., d/b/a)
Verizon Vermont, certain affiliates thereof, and)
FairPoint Communications, Inc. for approval of an)
asset transfer, acquisition of control by merger and)
associated transactions)

Order entered: 4/27/2007

PROTECTIVE ORDER REGARDING VERIZON PREFILED TESTIMONY

I. INTRODUCTION

On March 23, 2007, Verizon New England, Inc. d/b/a Verizon Vermont ("Verizon"), filed a Motion for Confidential Treatment of Prefiled evidence concerning information contained in one exhibit of Verizon witness Stephen Smith. The information concerns the price at which Verizon will provide ISP services to FairPoint Communications, Inc. ("FairPoint") under the Transition Services Agreement. Verizon argues that the information is sensitive and should be maintained as confidential. Verizon requests that the information be kept both from the public and from "any entity whose business relates in any way to the provision of Internet services." Verizon submitted an averment to support its request for confidentiality.

No other party opposed Verizon's motion or filed comment.

II. DISCUSSION

We have reviewed the motion and supporting materials, and we conclude that Verizon has made a *prima facie* showing that confidential treatment is warranted for the information at issue. Therefore, we hereby grant Verizon's motion for a protective order.

To promote full public understanding of the basis for its decisions, this Board has actively taken steps to limit the amount of information subject to protective orders. We have encouraged parties to remove material from that protection to the extent possible. Since 2001, we have required petitioners seeking a protective order to submit a document-specific (or information-specific) averment of the basis for keeping confidential any document (or information) that they

wish to be kept under seal. This arrangement appropriately places a heavy burden on the party seeking confidentiality to justify that decision. It also ensures that counsel for the party seeking confidentiality has actually reviewed and considered the relevant confidentiality factors, as they relate to the specific document or information at issue.¹ Generally, however, we only resolve disputes about information when there is a genuine disagreement about its confidential nature.²

In determining whether to protect confidential information, we consider three issues:

- (1) Is the matter sought to be protected a trade secret or other confidential research, development, or commercial information which should be protected?
- (2) Would disclosure of such information cause a cognizable harm sufficient to warrant a protective order?
- (3) Has the party seeking protection shown "good cause" for invoking the board's protection?³

Verizon argues that the price at which Verizon will provide ISP services to FairPoint is "future-oriented, service-specific pricing information" that is sufficiently sensitive that "disclosure should not be required to competitors."⁴ More specifically, it contends that disclosure of the price would allow competitors to gain competitively useful information about Verizon's costs,⁵ thereby conferring "a significant competitive advantage" on ISP competitors.⁶ Because no party filed any comment or noted any disagreement with Verizon's statements, we accept Verizon's averment as true.

We have reviewed the motion and supporting materials, and we have applied the existing standard. We conclude that the redacted information is commercial information that should be protected, that disclosure would cause a cognizable harm sufficient to warrant a protective order, and that there is good cause for protecting the information. Therefore, Verizon has made a *prima*

1. *Investigation into General Order No. 45 Notice filed by Vermont Yankee Nuclear Power Corporation re: proposed sale of Vermont Yankee Nuclear Power Station to Entergy Nuclear Vermont Yankee, LLC*, Docket, No. 6545, ("*Entergy Docket*"), Order of 11/9/01 at 5-6.

2. *Id.* at 6.

3. See, e.g., *Entergy Docket*, Order of 3/29/02 at 2.

4. Verizon Motion at 3 (italics added).

5. Attachment C to motion.

6. Motion at 1.

facie showing that confidential treatment is warranted for the information at issue, and we grant Verizon's motion for a protective order.

We also grant Verizon's request to withhold the ISP pricing information from any entity whose business relates in any way to the provision of Internet services. Vermont law recognizes that some commercial information is entitled to special protection that would limit its disclosure to the public or even other parties.⁷ Although our protective orders have commonly allowed all parties access to the relevant information, we have authority to place additional limits on the dissemination of such information if a party demonstrates good cause for such limits.⁸ Here, any commercial harm that would follow public disclosure would arise because the information reached competitors indirectly. For this reason, we approve limiting direct access to the information by those competitors.

In addition, we have consistently reminded parties who seek confidential treatment for materials that they have a continuing obligation to reexamine protected information and to release material that would not cause competitive harm, or that has otherwise been made public (even during the course of this proceeding), particularly testimony and exhibits. We expect Verizon to do the same here. At this time, we are not explicitly ruling that any specific information should remain confidential indefinitely. Parties retain the ability to challenge whether information encompassed by this ruling should be removed from the special protections we adopt in this Order or removed completely from protection as confidential information.

III. ORDER

Therefore, IT IS HEREBY ORDERED that the Confidential Information provided by Verizon (as set out in an attachment to this Order) shall be treated in this proceeding as follows:

1. All testimony, affidavits, transcripts, exhibits, and other documents that are subject to this Order as confidential information, and any documents that discuss or reveal documents that constitute confidential material, shall be placed in a sealed record by filing such information in

7. *See* V.R.C.P. 26(c).

8. *Entergy Docket*, Order of 10/8/02 at 2 (noting, for example, that "much of the information related to the solicitation and evaluation of bids for Vermont Yankee was not disclosed to Entergy.")

sealed envelopes or other appropriate sealed containers on which shall be endorsed the caption and docket number of the proceeding, the nature of the content (*e.g.*, exhibit, report, etc.), and a statement that it shall not be opened or released from the custody of the Clerk of the Board except by Order of the Board. Notwithstanding such a statement, the members of the Board, any employee or consultant specifically authorized by the Board to assist the Board in this proceeding, and any Hearing Officer appointed to this Docket may have access to such sealed confidential information, but shall not disclose such information to any person.

2. At hearing or conference in this proceeding, no persons, other than those who have signed or agreed to be bound by this Order and the Protective Agreement approved in the Order of March 28, 2007, and those whom the Board has expressly authorized to have access to this confidential information, shall be permitted to give, hear or review testimony given or held with respect to this confidential information.

3. Each Board stenographer or reporter in this proceeding shall acknowledge and be bound by this Order. Each such Board stenographer or reporter shall be instructed to and shall start a separate transcription for testimony or discussion on the record of confidential information. Such transcription shall be marked "Confidential" and shall be sealed and filed with the Clerk of the Board, and copies of the same shall be made available only to those persons authorized to view such information. Such transcription shall, in all other respects, be treated as confidential information pursuant to this Order.

4. The Board retains jurisdiction to make such amendment, modifications and additions to this Order as it may, from time to time, deem appropriate, including any such amendments, modifications or additions resulting from a motion made pursuant to the Protective Agreement. Any party or other person may apply to the Board for an amendment, modification or addition of this Order.

Dated at Montpelier, Vermont, this 27th day of April, 2007.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: April 27, 2007

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)